# The Constitutional Option:
# Restoring Fairness to Senate Nominations

The constitutional option is grounded in Article I, Section 5 of the U.S. Constitution that empowers the Senate to "determine the Rules of its Proceedings."

***Goal:*** Restore the 214-year Senate tradition of approving the President's nominations by a simple majority vote.

***Means:*** Use a simple majority vote to set a new precedent without changing Rule XXII of the standing rules. For instance, a Senator would raise a point of order to close debate on a nominee. The presiding officer would sustain the point of order, thereby setting a new, binding precedent. The minority's appeal of the ruling could be tabled with a simple majority vote.

***Historic Examples:*** The use of a simple majority vote to set precedents is as old as the Senate. In recent history, Senate Majority Leader Robert Byrd (D-WV) generated four precedents that allowed a simple majority to change Senate procedures without altering the text of the standing rules. Two of Byrd's precedents overturned precedents then standing, and two reinterpreted the language of an existing standing rule. The precedents were made by a point of order and sustained with a simple majority vote:

1. Ending post-cloture filibusters (1977)
2. Limiting amendments to appropriations bills (1979)
3. Governing consideration of nominations (1980)
4. Governing voting procedures (1987)

***Will the constitutional option lead to the elimination of the legislative filibuster?***
No. The legislative filibuster is an important feature of our bicameral legislature that will be preserved. Restoring simple-majority approval of nominations will not lead to the elimination of the minority's rights or the filibuster of legislation. The constitutional option will apply only to the filibuster of nominations. In fact, when Democrats spearheaded an effort to eliminate ALL filibusters in 1995, 19 Democrat Senators voted for it (including Bingaman, Boxer, Feingold, Harkin, Kennedy, Kerry, Lautenberg, Lieberman, And Sarbanes), but not one Republican.

***Will the constitutional option undermine the ability of a future Republican minority to defend its rights?***
No. Never has a Republican minority stopped a judicial nominee with majority support from getting an up-or-down vote on the Senate Floor. Not until 2003 did that happen – under the Democratic minority of Tom Daschle and Harry Reid. The constitutional option simply restores the 214-year tradition of the U.S. Senate.

***Does the constitutional option undermine the principle of the Senate as a continuing body?***
No. The Senate has remained a continuing body even though precedents affecting Senate procedure are established throughout the year by simple majority vote.

***Does the constitutional option erase the differences between the House and Senate?***
No. The Senate will remain the "saucer that cools the hot cup of tea." Holds, legislative filibusters, and unanimous consent agreements will continue to govern the day-to-day actions of the Senate, empowering the minority to stop the majority.